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(7) Since the proceedings before the trial Court were stayed by this Court, the parties, through their counsel, are directed to appear before the trial Court on 16th December, 2003 for further proceedings in accordance with law.

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**R.N.R.**

*Before V.M. Jain, J*

KISHAN SINGH & ANOTHER,—Petitioners

*versus*

M/S EAST INDIA COTTEN MANUFACTURING CO. LTD.  
& OTHERS,—Respondents

*C.R. No. 4088 OF 2003*

7th November, 2003

*Code of Civil Procedure, 1908—S. 96—Civil Court dismissing a suit while holding the suit being not maintainable and that the Court had no jurisdiction to try the same—Appeal against Judgment and decree of trial Court filed—1st Appellate Court also rejecting the appeal as not maintainable—Neither the trial Court ordering return of the plaint nor rejecting the plaint—Trial Court even ordering to prepare a decree sheet—Such a judgment & decree of the trial Court held to be appealable—Petition allowed.—Case remanded.*

*Held*, that the trial Court dismissed the suit, holding that the suit was not maintainable in its present form and even otherwise the Civil Court had no jurisdiction to entertain and decide the present suit. Resultantly, the suit was dismissed and a decree sheet was prepared. It was not a case where the trial Court had ordered the return of the plaint to be filed before the appropriate authority not it was a case where the trial Court had rejected the plaint. On the other hand, the trial Court had dismissed the suit of the plaintiffs and had also prepared a decree sheet in this regard. Such judgment and decree passed by the trial Court were certainly appealable before the District Judge and it could not be said that no appeal lay before the District Judge. Such an appeal would be maintainable under Section 96 of the CPC, which provides that an appeal shall lie from every decree, passed by any Court exercising the original jurisdiction.

(Para 5)

A.P. Bhandari, Advocate, *for the petitioners.*

P.K. Mutneja, Advocate, *for the respondents.*

## JUDGMENT

V.M. JAIN, J.

(1) This petition under Article 227 of the Constitution of India has been filed by the petitioners, challenging the order dated 25th June, 2003, passed by the Additional District Judge, dismissing the appeal as not maintainable.

(2) The plaintiff-petitioners had filed a suit for permanent injunction against the defendant-respondents. The suit was contested by the defendants. Following issues were framed :—

- “1. Whether the plaintiff is entitled for decree of permanent injunction as prayed for. OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form. OPD.
3. Whether this Civil Court has no jurisdiction to try and entertain the present suit.
4. Relief.”

(3) Out of the aforesaid four issues, issue Nos. 2 and 3 were treated as preliminary issues,—*vide* order dated 16th May, 2003. Both these issues were dealt with together by the trial Court and were decided in favour of the defendants and it was held that the suit was not maintainable in the present form and that the Civil Court had no jurisdiction to entertain and decide the present suit. Resultantly, the suit of the plaintiffs was dismissed and it was directed that the decree-sheet be prepared,—*vide* judgment and decree dated 30th May, 2003. Aggrieved against the same, the plaintiffs filed appeal before the District Judge, during summer vacations. The learned Additional District Judge (Vacation Judge),—*Vide* order dated 25th June, 2003, dismissed the said appeal at the preliminary stage holding that the appeal, filed by the plaintiffs against the aforesaid judgment and decree, dated 30th May, 2003, was not maintainable and could not be admitted to a regular hearing and the same was ordered to be rejected. Aggrieved against this order dated 25th June, 2003, passed by the Additional District Judge, the plaintiffs filed the present revision petition in this Court. Notice of motion was issued.

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(4) Learned counsel for the petitioner submitted before me that the trial Court had dismissed the suit of the plaintiffs holding that the suit was not maintainable and that the Civil Court had no jurisdiction to try the present suit. A decree-sheet was also prepared. Aggrieved against the aforesaid judgment and decree of the trial Court, the plaintiffs filed appeal before the District Judge. The learned Additional District Judge, during summer vacations, illegally dismissed the appeal holding that no such appeal lay against the aforesaid judgment and decree of the trial Court and that the appeal was not maintainable and ordered the same to be rejected. It has been submitted that the appeal before the District Judge was maintainable against the aforesaid judgment and decree dated 30th May, 2003, passed by the trial Court, whereby the suit of the plaintiffs was dismissed on the ground that the same was not maintainable and that the Civil Court had no jurisdiction to try the present suit. It has been submitted that the learned Additional District Judge had erred in law in dismissing the appeal placing reliance on **Swaran and another versus Gram Panchayat, Malikpur (1)**. On the other hand, learned counsel for the defendant-respondents submitted before me that the learned Additional District Judge was perfectly justified in dismissing the appeal being not maintainable as no appeal lay against the judgment and decree dated 30th May, 2003 passed by the learned trial Court. Reliance was placed on Swaran's case (*supra*) as also on the law laid down by the Hon'ble Supreme Court in the case reported as **Durga Prasad versus Naveen Chandra and others (2)**.

(5) After hearing learned counsel for the parties and perusing the record, in my opinion, the present revision petition must be allowed and the order dated 25th June, 2003, passed by the Additional District Judge must be set aside and the case remanded for decision of the appeal afresh, in accordance with law. As referred to above, on the pleadings of the parties, the learned trial Court had framed various issues and two of the issues, referred to above, were treated as preliminary issues. After hearing both the sides, the learned trial Court had held that the suit in the present form was not maintainable and that the Civil Court had no jurisdiction to try and entertain the present suit. Resultantly, the suit was dismissed and it was directed that the decree-sheet be prepared accordingly. In compliance to these

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(1) 1998 (2) P.L.J. 172

(2) 1996 (3) S.C.C. 300

directions, the trial Court had also prepared the decree-sheet, showing that the suit filed by the plaintiffs had been dismissed. Aggrieved against the aforesaid judgment and decree dated 30th May, 2003, passed by the trial Court, the plaintiffs filed appeal before the District Judge. This appeal of the plaintiffs was dismissed by the Additional District Judge (Vacation Judge) during summer vacations, observing that against the judgment and decree dated 30th May, 2003, no appeal was maintainable and the only remedy available to the aggrieved person was to file revision against the said order. Reliance was placed on the law laid down by this Court in Swaran's case (*supra*). In my opinion, the learned Additional District Judge committed illegality in dismissing the appeal of the plaintiffs,—*vide* order dated 25th June, 2003 against the judgment and decree dated 30th May, 2003. As referred to above, the plaintiffs had filed a suit for declaration and injunction. The trial Court dismissed the said suit holding that the suit was not maintainable in its present form and even otherwise the civil Court had no jurisdiction to entertain and decide the present suit. Resultantly, the suit was dismissed and a decree-sheet was prepared. It was not a case where the trial Court had ordered the return of the plaint to be filed before the appropriate authority, nor it was a case where the trial Court had rejected the plaint. On the other hand, the trial Court had dismissed the suit of the plaintiffs and had also prepared a decree-sheet in this regard. In my opinion, such judgment and decree, passed by the trial Court, were certainly appealable before the District Judge and it could not be said that no appeal lay before the District Judge. Such an appeal would be maintainable under Section 96 of the CPC, which provides that an appeal shall lie from every decree, passed by any Court exercising the original jurisdiction. In my opinion, the learned Additional District Judge erred in law in referring to the provisions of Section 104 and Order 43 Rule 1, CPC. The trial Court had not passed any order which was required to be challenged by the plaintiffs by way of appeal or revision. In fact, the trial Court had dismissed the suit of the plaintiffs and while doing so, the trial Court had passed judgment and decree against the plaintiffs. An appeal would lie against the said judgment and decree of the trial Court under Section 96, CPC. If the trial Court had only decided some issue and the aggrieved party wanted to challenge the same, certainly it could be said that such an order was not appealable either under Section 104 or under Order 43 Rule 1, CPC and in such an eventuality,

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the said party would be required to challenge the same by way of revision. However, the position in the present case is entirely different. The trial Court had not only decided the two issues against the plaintiffs, but consequently dismissed the suit of the plaintiffs with a direction that decree-sheet be also prepared and as referred to above, the decree-sheet be also prepared. Under such situation, the plaintiffs had the right to challenge the said judgment and decree by filing appeal as provided under Section 96, CPC.

(6) The authority **Swaran and another versus Gram Panchayat, Malikpur** (*supra*), which has been relied upon by learned counsel for the respondents, in my opinion, would have no application to the facts of the present case. In the reported case, the plaintiff-petitioners had filed a suit restraining the defendant-respondents from interfering in their possession over the suit land. The said suit was contested by the defendant-Panchayat alleging therein that the civil Court had no jurisdiction. Certain issues were framed. The issue regarding jurisdiction of the Civil Court was treated as preliminary issue. *Vide* order dated 12th September, 1995, the trial Court decided the said issue against the defendant-panchayat and it was held that the civil Court had the jurisdiction to try the said suit. The said order dated 12th September, 1995 passed by the trial Court, was challenged by the defendant-Gram Panchayat by way of appeal before the Additional District Judge. The learned Additional District Judge,—*vide* order dated 26th October, 1995, upheld the order of the trial Court holding that the civil Court had the jurisdiction to try the said suit and accordingly the appeal was dismissed. Subsequently, the defendant-Gram Panchayat filed review application and the Additional District Judge,—*vide* order dated 6th December, 1996, accepted the review application, set aside the order of the trial Court and held that the civil Court had no jurisdiction to try the suit. Aggrieved against the same, the plaintiffs filed the revision petition in this Court. It was argued on behalf of the plaintiff-petitioners that no appeal against the order dated 12th September, 1995, passed by the trial Court, was maintainable before the Additional District Judge because the said order was neither a decree nor a judgment and was not appealable. After considering the provisions of Sections 96, 104 and Order 43 Rule 1, CPC, it was held by this Court that no appeal would be maintainable against a finding and once no appeal was maintainable, the order, passed by the Additional District Judge, setting aside the order of the

trial Court, was not sustainable and was without jurisdiction and it was held that remedy, if any, available to the aggrieved person, was to file revision petition against the order, passed by the trial Court. In my opinion, the law laid down by this Court in Swaran's case (*supra*) would have no application to the facts of the present case. In the reported case, the trial Court had decided the issue regarding jurisdiction of the civil Court in favour of the plaintiff and it was held that the civil Court had the jurisdiction to entertain and decide the said suit. Under such circumstances, the suit was still to be decided by the trial Court. Only an issue was decided in favour of the plaintiff holding that the civil Court had the jurisdiction. Under such situation, this court had rightly held that such an order was not appealable under any provision of law and the only remedy available was to file a revision petition. However, so far as the present case is concerned, the position is entirely different. In the present case, the trial Court had held that the suit was not maintainable in the present form and that the civil Court had no jurisdiction to entertain and decide the present suit. Resultantly, the suit was dismissed and a decree-sheet was prepared. Thereupon, nothing remained with the trial Court to be decided. Under such circumstances, in my opinion, the judgment and decree of the trial Court dismissing the suit, were certainly appealable to the District Judge and the appeal could not be dismissed being not maintainable merely on the ground that the appeal was against the finding on an issue regarding jurisdiction. It appears that the learned Additional District Judge had failed to appreciate that in the present case, the suit had been dismissed by the trial Court holding that the civil Court had no jurisdiction whereas in the reported case, the trial Court had held that the civil Court had the jurisdiction and the suit was still pending before the trial Court.

(7) In Durga Parsad's case (*supra*), relied upon by learned counsel for the defendant-respondents, the respondents had filed the suit for specific performance. The evidence of the plaintiffs was closed on 12th March, 1991 and the defendants evidence was directed to be recorded on 20th March, 1991 and the matter was adjourned from time to time till 11th January, 1994 on which date, an adjournment was sought and the application for adjournment was declined and after hearing the arguments, the judgment was reserved and pronounced on 14th January, 1994. Thereafter, an application was filed on 27th January, 1994 to set aside the decree under Order 9 Rule

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13, CPC. When the said application was pending, the appellant moved an application objecting to the maintainability of the application and prayed that this may be heard as a preliminary point. The said application was dismissed by the trial Court on 7th October, 1995 and against the said order, the appellant filed writ petition under Article 226 of the Constitution of India and the same was dismissed by the impugned order dated 21st December, 1995 by the High Court and against the same, the appellant filed Special Leave Appeal before the Hon'ble Supreme Court. It was under those circumstances that it was held by the Hon'ble Supreme Court that if the impugned order was not appealable under Section 96 or under Order 43 Rule 1 read with 104, CPC, still a revision was maintainable and instead of availing that remedy, the appellant invoked the jurisdiction under Article 226 of the Constitution of India which was not warranted. It was further held that the procedure prescribed by the Code of Civil Procedure could not be by-passed by availing the remedy not maintainable under Article 226 of the Constitution of India. Accordingly, the Hon'ble Supreme Court declined to interfere with the order passed by the High Court. In my opinion, the law laid down by the Hon'ble Supreme Court, in this authority, would have no application to the facts of the present case and the defendant-respondents cannot take any benefit from the law laid down by the Hon'ble Supreme Court in this authority.

(8) In view of my detailed discussion above, in my opinion, the appeal against the judgment and decree dated 30th May, 2003, passed by the trial Court, was maintainable before the District Judge and that the learned Additional District Judge had erred in law in dismissing the said appeal holding that the appeal was not maintainable. Accordingly, the order dated 26th May, 2003, passed by the Additional District Judge is set aside and the case is remanded to the District Judge, Faridabad for deciding the appeal on merits in accordance with law. It is directed that the District Judge, Faridabad, shall either decide the appeal herself or shall assign the same to some Additional District Judge in accordance with law. Parties through their counsel are directed to appear before the District Judge, Faridabad, on 15th December, 2003, for further proceedings.

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**R.N.R.**